

## AN ACT

ENTITLED, An Act to revise certain provisions pertaining to the sale, purchasing, and possession of products containing pseudoephedrine or ephedrine.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 34-20D-1 be amended to read as follows:

34-20D-1. No retailer may sell, in a single transaction, more than two packages containing pseudoephedrine or ephedrine as an active ingredient. For purposes of this chapter, the term, retailer, means any person who sells merchandise at retail and from whom original packages of nonprescription drugs are sold or taken to be sold at retail and who is licensed by the Board of Pharmacy to sell nonprescription drugs. This restriction does not apply to any sale made pursuant to a valid prescription drug order prescribed by a practitioner as defined in § 36-11-2 with appropriate authority. Any retailer or any employee of a retailer who sells packages containing pseudoephedrine or ephedrine in violation of this section is guilty of a Class 1 misdemeanor.

Section 2. That § 34-20D-2 be amended to read as follows:

34-20D-2. No person may purchase, in a single transaction, more than two packages containing pseudoephedrine or ephedrine as an active ingredient. This restriction does not apply to purchases made with a valid prescription drug order prescribed by a practitioner as defined in § 36-11-2 with appropriate authority. Any person who purchases packages containing pseudoephedrine or ephedrine in violation of this section is guilty of a Class 1 misdemeanor.

Section 3. That § 34-20D-3 be amended to read as follows:

34-20D-3. Any retailer who offers for sale a product containing pseudoephedrine or ephedrine as an active ingredient shall display and offer the product for sale, except as otherwise provided, behind a counter where the public is not permitted or in a locked case so that a customer wanting access to the package must ask a store employee for assistance. The retailer may display or offer for

sale without restriction a product containing pseudoephedrine or ephedrine as an active ingredient if the product is displayed using any type of anti-theft device system including an electronic anti-theft device system that utilizes a product tag and detection alarm which prevents the theft of the product.

Section 4. That § 34-20D-4 be repealed.

Section 5. That § 34-20D-5 be amended to read as follows:

34-20D-5. A retailer shall post notice at the location where a product containing pseudoephedrine or ephedrine as an active ingredient is displayed or offered for sale stating the following:

South Dakota law prohibits the sale or purchase of more than two packages containing pseudoephedrine or ephedrine as an active ingredient unless sold or purchased with a valid prescription drug order prescribed by a practitioner as defined in § 36-11-2 with appropriate authority.

Section 6. That chapter 34-20D be amended by adding thereto a NEW SECTION to read as follows:

If offering for sale a product containing pseudoephedrine or ephedrine as an active ingredient, a retailer shall, before making such a sale, require and make a record of the identification of the person purchasing the product containing pseudoephedrine or ephedrine. For purposes of this section, the term, identification, means a document issued by a governmental agency which contains a description of the person or a photograph of the person, or both, and gives the person's date of birth, such as a driver's license, passport, or military identification card. The retailer shall maintain the record of identification, including the purchaser's name and date of birth. On August 1, 2006, and no later than the fifth day of every month thereafter, the retailer shall send any such records to the Office of the Attorney General. No retailer may use or maintain the record for any private or commercial purpose or disclose the record to any person, except as authorized by law. The retailer shall disclose the record, upon request, to a law enforcement agency for a law enforcement purpose.

Section 7. That chapter 34-20D be amended by adding thereto a NEW SECTION to read as follows:

Any retailer who in good faith releases information governed by this chapter to a law enforcement agency for a law enforcement purpose is immune from civil liability for such release unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

Section 8. That chapter 34-20D be amended by adding thereto a NEW SECTION to read as follows:

No person may possess, receive, or otherwise acquire more than nine grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in any product, mixture, or preparation within any thirty-day period. This restriction does not apply to any quantity of product, mixture, or preparation obtained pursuant to a valid prescription drug order prescribed by a practitioner as defined in § 36-11-2 with appropriate authority.

Possession of more than nine grams of a drug product containing more than nine grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base constitutes a rebuttable presumption of the intent to use the product as a precursor to methamphetamine or another controlled substance. This rebuttable presumption does not apply to:

- (1) A retail distributor of drug products;
- (2) A wholesale drug distributor, or its agents;
- (3) A manufacturer of drug products, or its agents;
- (4) A pharmacist licensed by the Board of Pharmacy; or
- (5) A licensed health care professional possessing the drug products in the course of carrying out the profession.

Any violation of this section is a Class 1 misdemeanor.

An Act to revise certain provisions pertaining to the sale, purchasing, and possession of products containing pseudoephedrine or ephedrine.

=====

I certify that the attached Act  
originated in the  
  
SENATE as Bill No. 207

\_\_\_\_\_  
Secretary of the Senate  
=====

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 207  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

=====

Received at this Executive Office  
this \_\_\_\_\_ day of \_\_\_\_\_ ,  
  
20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor  
=====

The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor  
=====

STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State